

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 10

RIN 1018-AB72

Proposed Amendments to the List of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend the List of Migratory Birds contained in 50 CFR 10.13. The Service proposes to add 20 species, remove 1 species, and revise the English (common) and/or scientific names of 23 previously listed species as necessary to conform with the most recent taxonomy and nomenclature. After consideration of comments received on this proposed rule a final rule containing a full, up-to-date List of Migratory Birds will be prepared and published.

DATES: Comments must be submitted on or before July 10, 1995.

ADDRESSES: Comments may be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (16 U.S.C. 703-711) (MBTA) expressly protects any migratory bird included in the terms of the Convention for the Protection of Migratory Birds, August 16, 1916, United States—Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628; the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States—Mexico, as amended, 50 Stat. 1311, T.S. No. 912; the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and their Environment, March 4, 1972, United States—Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990 (16 U.S.C. 703); and the Convention Between the United States of America and the Union of Soviet Socialist Republics [=Russia]

Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073 (16 U.S.C. 703, 712).

The Service regulates most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds under the terms of the MBTA. Regulations implementing the MBTA, which are found principally in Title 50 Code of Federal Regulations (CFR), Parts 10, 20, and 21, may be applied to any bird covered by one of the four treaties (16 U.S.C. 703, 712).

A list of birds protected under the Canadian, Mexican, Japanese, and Russian treaties is currently contained in 50 CFR 10.13, which was last revised on April 5, 1985 (50 FR 13708).

The treaties with Canada and Mexico indicate, by scientific names of families or groups or by the English names of species or groups of species, which birds were intended to be protected by the respective treaties. As a result of increased knowledge of bird taxonomy, many of the names that appear in the Canadian and Mexican treaties are now obsolete. Information on currently accepted scientific terminology for the groups of birds protected by each of these treaties was provided in the previous final rule (50 FR 13708).

The Japanese and Russian treaties listed individual species of birds to be protected. For 35 species, the scientific (generic or specific) name currently recognized by the American Ornithologists' Union differs from that which appears in the treaties. The following cross-reference provides a linkage between the scientific names used in the List of Migratory Birds and those that appear in the appendices to the Japanese and Russian treaties. The first name is the modern equivalent recognized by the American Ornithologists' Union (AOU) (and adopted in 50 CFR 10.13 or this proposed rule) and the second name is that which appears in one or another of the treaties. This does not revise the appendices to either the Japanese or the Russian treaty (indicated by J or R).

EXAMPLE—*Chen canagica*, the Emperor Goose, is listed as *Anser canagicus* in the Japanese treaty and as *Philacte canagica* in the Russian treaty. The latter two names are considered to be synonyms of *Chen canagicus*.

Accipiter gularis (Asiatic Sparrow Hawk) was listed as *Accipiter virgatus* (J & R);

Actitis hypoleucos (Common Sandpiper) was listed as *Tringa hypoleucos* (J & R);

Anas americana (American Wigeon) was listed as *Mareca americana* (J);

Anas clypeata (Northern Shoveler) was listed as *Spatula clypeata* (J);

Anas penelope (Eurasian Wigeon) was listed as *Mareca penelope* (J);

Anthus rubescens (Water Pipit) was listed as *Anthus spinoletta* (J & R);

Branta bernicla (Brant) incorporates *Branta nigricans* (R);

Calidris alba (Sanderling) was listed as *Crocethia alba* (J);

Calidris subminuta (Long-toed Stint) was listed as part of *Calidris minutilla* (J);

Carduelis flammea (Common Redpoll) was listed as *Acanthis flammea* (J);

Carduelis hornemanni (Hoary Redpoll) was included as part of *Carduelis flammea* (J), and was listed as *Acanthis hornemanni* (R);

Charadrius morinellus (Eurasian Dotterel) was listed as *Eudromias morinellus* (J & R);

Chen canagica (Emperor Goose) was listed as *Anser canagicus* (J), and *Philacte canagica* (R);

Chen caerulescens (Snow Goose) was listed as *Anser caerulescens* (J);

Cyclorhynchus psittaculus (Parakeet Auklet) was listed as *Aethia psittacula* (J);

Cygnus columbianus (Tundra Swan) incorporates *Cygnus bewickii* (R);

Egretta sacra (Pacific Reef Heron) was listed as *Demigretta sacra* (J);

Fratercula cirrhata (Tufted Puffin) was listed as *Lunda cirrhata* (J & R);

Gallinago gallinago (Common Snipe) was listed as *Capella* (=Gallinago) gallinago (R);

Gallinago megala (Swinhoe's Snipe) was listed as *Capella* (=Gallinago) megala (R);

Gallinago stenura (Pin-tailed Snipe) was listed as *Capella* (=Gallinago) stenura (R);

Heterosceles brevipes (Gray-tailed Tattler) was included as part of *Tringa incana* [=incanus] (J);

Heterosceles incanus (Wandering Tattler) was listed as *Tringa incana* (J);

Hirundo pyrrhonota (Cliff Swallow) was listed as *Petrochelidon pyrrhonota* (R);

Luscinia calliope (Siberian Rubythroat) was listed as *Erithacus calliope* (J);

Melanitta fusca (White-winged Scoter) incorporates *Melanitta deglandi* (J);

Mergellus albellus (Smew) was listed as *Mergus albellus* (J & R);

Milvus migrans (Black Kite) was listed as *Milvus korschun* (=migrans) (R);

Motacilla lugens (Black-backed Wagtail) was included as part of *Motacilla alba* (J & R);

Numenius borealis (Eskimo Curlew) was included as part of *Numenius minutus* (J);

Nycticorax goisagi (Japanese Night-Heron) was listed as *Gorsachius goisagi* (J);

Nycticorax melanolophus (Malay Night-Heron) was listed as *Gorsachius melanolophus* (J);

Phalaropus lobatus (Northern Phalarope) was listed as *Lobipes lobatus* (R);

Pterodroma hypoleuca (Bonin Petrel) was listed as *Pterodroma leucoptera* (=hypoleuca) (R);

Tachycineta bicolor (Tree Swallow) was listed as *Iridoprocne bicolor* (R);

Turdus obscurus (Eyebrowed Thrush) was listed as *Turdus pallidus* (=obscurus) (R);

The amendments proposed here are necessary to:

(i) Add species protected under the Japanese and Russian treaties that are not currently listed;

(ii) Bring the list into conformity with the English (common) and scientific names given in the 6th Edition of the AOU's *Check-list of North American Birds* (1983), as revised;

(iii) Add species that are of regular occurrence in the United States that were not included on the last list; and

(iv) Remove species that are no longer considered to be taxonomically valid.

Since the last publication of the List of Migratory Birds (50 FR 13708), the AOU has published five supplements to the 6th (1983) edition of the *Check-list of North American Birds*. These supplements (Auk 102: 680–686, 1985; 104: 591–596, 1987; 106: 532–538, 1989; 108: 750–754, 1991; 110: 675–682, 1993) represent decisions by the AOU's Committee on Classification and Nomenclature regarding the validity of certain distributional records that would add species to the list of North American birds and on systematic and/or nomenclatural proposals that affect the English (common) or scientific names of species in the 6th Edition of the *Check-list*. Decisions published in the supplements will be incorporated into the next edition of the *Check-list*.

Twenty species are proposed to be added to the list of protected birds.

Two species would be added because of recent distributional records that indicate they are a part of the avifauna of the United States on a regular basis: Sandpiper, Green, *Tringa ochropus*; and Turtle-Dove, Oriental, *Streptopelia orientalis*.

Two species would be added because they are included in the Appendix of the Russian treaty and in the Annex to the Japanese treaty, respectively (failure to include these species in the current list is considered an oversight): Duck, Spot-billed, *Anas poecilorhyncha*; and

Gull, Black-tailed, *Larus crassirostris*.

One species would be added because it is a regular member of the U.S.

avifauna and belongs to a taxonomic group (subfamily Sylviinae, formerly family Sylviidae) covered by the Canadian and Mexican conventions: Millerbird, *Acrocephalus familiaris*.

Fifteen species would be added on the basis of recent taxonomic changes; what had been considered a single species is now regarded as two or more species. There would be no change in protection because of the change of listing.

EXAMPLE—what was formerly considered to be the Arctic Loon, *Gavia arctica*, is now considered to be two species, the Arctic Loon, *Gavia arctica*, and the Pacific Loon, *Gavia pacifica*, both of which would be listed:

Coot, Hawaiian, *Fulica alai* (formerly included in *F. americana*, American Coot);

Flycatcher, Cordilleran, *Empidonax occidentalis* (formerly included in *E. difficilis*, Western [=Pacific-slope] Flycatcher);

Golden-Plover, Pacific, *Pluvialis fulva* (formerly included in *P. dominica*, Lesser [=American] Golden Plover);

Gnatcatcher, California, *Poliophtila californica* (formerly included in *P. melanura*, Black-tailed Gnatcatcher);

Grebe, Clark's, *Aechmophorus clarkii* (formerly included in *A. occidentalis*, Western Grebe);

Kamoa, *Myadestes myadestinus* (formerly included in *Phaeornis* [=Myadestes] *obscurus*, Hawaiian Thrush [=Omao]);

Loon, Pacific, *Gavia pacifica* (formerly included in *G. arctica*, Arctic Loon);

Olomao, *Myadestes lanaiensis* (formerly included in *Phaeornis* [=Myadestes] *obscurus*, Hawaiian Thrush [=Omao]);

Petrel, White-necked, *Pterodroma cervicalis* (formerly included in *P. externa*, White-necked [=Juan Fernandez] Petrel);

Rosy-Finch, Black, *Leucosticte atrata* (formerly included in *L. arctoa*, Rosy Finch);

Rosy-Finch, Brown-capped, *Leucosticte australis* (formerly included in *L. arctoa*, Rosy Finch);

Rosy-Finch, Gray-crowned, *Leucosticte tephrocotis* (formerly included in *L. arctoa*, Rosy Finch);

Sapsucker, Red-naped, *Sphyrapicus nuchalis* (formerly included in *S. varius*, Yellow-bellied Sapsucker);

Towhee, California, *Pipilo crissalis* (formerly included in *P. fuscus*, Brown Towhee); and

Vireo, Yellow-green, *Vireo flavoviridis* (formerly included in *V. olivaceus*, Red-eyed Vireo).

One species would be removed because of questions about its

taxonomic validity in reference to North American taxa:

Finch, Rosy, *Leucosticte arctoa*.

Finally, the English (common) and/or scientific (generic or specific) names of 23 species would be revised to conform with the most recent nomenclature. EXAMPLE—The English name of the Common Barn-Owl, *Tyto alba*, would be changed to Barn Owl. None of these strictly nomenclatural revisions would affect the protection afforded any species:

Barn-Owl, Common, would be changed to Owl, Barn;

Bittern, Chinese, would be changed to Bittern, Yellow;

Caracara, Crested, *Polyborus plancus*, would be changed to *Caracara plancus*;

Cormorant, Olivaceous, *Phalacrocorax olivaceus*, would be changed to Cormorant, Neotropic, *Phalacrocorax brasilianus*;

Curlew, Least, would be changed to Curlew, Little;

Egret, Plumed, *Egretta intermedia*, would be changed to Egret, Intermediate, *Mesophoyx intermedia*;

Flycatcher, Western, would be changed to Flycatcher, Pacific-slope;

Gannet, Northern, *Sula bassanus*, would be changed to *Morus bassanus*;

Golden-Plover, Lesser, would be changed to Golden-Plover, American;

Goose, Hawaiian, *Nesochen sandvicensis*, would be changed to *Branta sandvicensis*;

Hawk-Owl, Northern, would be changed to Owl, Northern Hawk;

Heron, Green-backed, *Butorides striatus* would be changed to Heron, Green, *Butorides virescens*;

Kite, Black-shouldered, *Elanus caeruleus*, would be changed to Kite, White-tailed, *Elanus leucurus*;

Night-Heron, Yellow-crowned,

Nycticorax violaceus, would be changed to *Nyctanassa violacea*;

Owl, Burrowing, *Athene cunicularia*, would be changed to *Speotyto cunicularia*;

Pauraque, Common, would be changed to Pauraque;

Petrel, White-necked, *Pterodroma externa*, would be changed to Petrel, Juan Fernandez;

Pipit, Water, *Anthus spinoletta*, would be changed to Pipit, American, *Anthus rubescens*;

Storm-Petrel, Sooty, would be changed to Storm-Petrel, Tristram's;

Thrush, Eye-browed, would be changed to Thrush, Eyebrowed;

Thrush, Hawaiian, *Phaeornis obscurus*, would be changed to Omao, *Myadestes obscurus*;

Thrush, Small Kauai, *Phaeornis palmeri*, would be changed to Puaiohi, *Myadestes palmeri*; and, Towhee, Brown, would be changed to Towhee, Canyon.

In total, the proposed amendments would involve 44 species and result in a net addition of 19 species to the list. The names of the species that are proposed to be added, removed, or revised are arranged in the same way as in the current List of Migratory Birds, that is, alphabetical by English (common) name under their respective group names (e.g., Flycatcher, Cordilleran).

Note: Corresponding amendments to the Taxonomic Listing will be incorporated into the Final Rule, as appropriate).

After consideration of comments received on this proposed rule, a final decision document containing a full, up-to-date List of Migratory Birds will be prepared and published.

Statement of Effects

Because the proposed revision of the List of Migratory Birds merely redescribes the birds already protected by the Federal treaties with Canada, Mexico, Japan, and Russia, the Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Executive Order (E.O.) 12866 and Paperwork Reduction Act

This document was not subject to Office of Management and Budget review under E.O. 12866. This rule does

not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

Based on the fact that these regulations merely redescribe the birds already protected by the Federal treaties with Canada, Mexico, Japan, and Russia, the Service has determined that revision of the List of Migratory Birds in 50 CFR 10.13 is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement on such regulation is not required.

Endangered Species Act Consideration

A number of species appearing on the List of Migratory Birds are also designated as Endangered or Threatened under provisions of the Endangered Species Act (16 U.S.C. 1531–1544). No legal complications arise from the dual listing inasmuch as the two lists are developed by separate authorities and for different purposes.

Primary Authors

The primary author of this proposed rule is John L. Trapp, U.S. Fish and Wildlife Service.

Public Comments Invited

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written

comments, suggestions, or objections regarding this proposal to the location identified in the address section above. Comments must be received on or before July 10, 1995. Following review and consideration of the comments, the Service will issue a final rule on these proposed amendments to the List of Migratory Birds.

List of Subjects in 50 CFR Part 10

Exports, Birds, Imports, Law enforcement officers, Wildlife.

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 10, subpart B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 10—[AMENDED]

1. The authority citation for part 10 is revised to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1544; 16 U.S.C. 1361–1389, 1401–1407; 16 U.S.C. 742a–742j–i; 16 U.S.C. 3371–3378.

2. Amend § 10.13 by revising the last sentence of the introductory text to read as follows:

§ 10.13 List of Migratory Birds.

* * * Taxonomy and nomenclature follows the American Ornithologists' Union's *Check-list of North American Birds* (6th Edition, 1983, as revised through 1993).

* * * * *

3. Amend § 10.13 by adding, and removing certain entries and subheadings in the Alphabetical Listing as indicated in the table below:

Remove	Add (alphabetically)
REMOVE Barn-Owl, Common, <i>Tyto alba</i>	ADD Barn-Owl (see Owl, Barn)
Under "Bittern:" REMOVE entry	Under "Bittern:" ADD alphabetically entries
Chinese, <i>Ixobrychus sinensis</i>	Chinese (see Yellow)
	Yellow, <i>Ixobrychus sinensis</i>
REMOVE Caracara, Crested, <i>Polyborus plancus</i>	ADD Caracara, Crested, <i>Caracara plancus</i>
	Under "Coot:" ADD alphabetically entry
	Hawaiian, <i>Fulica alai</i>
Under "Cormorant:" REMOVE entry	Under "Cormorant:" ADD alphabetically entries
Olivaceous, <i>Phalacrocorax olivaceus</i>	Olivaceous (see Neotropic)
	Neotropic, <i>Phalacrocorax brasilianus</i>
Under "Curlew (see Whimbrel):" REMOVE entry	Under "Curlew (See Whimbrel):" ADD alphabetically entries
Least, <i>Numenius nimetus</i>	Least (see Little)
	Little, <i>Numenius minutus</i>
	Under "DUCKS:" ADD alphabetically entry
	Spot-billed Duck, <i>Anas poecilorhyncha</i>
Under "Egret:" REMOVE entry	Under "Egret:" ADD alphabetically entries
Plumed, <i>Egretta intermedia</i>	Intermediate, <i>Mesophoyx intermedia</i>
	Plumed (see Intermediate)
Under "Finch:" REMOVE entry	
Rosy, <i>Leucosticte arctoa</i>	
Under "Flycatcher:" REMOVE entry	Under "Flycatcher:" ADD alphabetically entries
Western, <i>Empidonax difficilis</i>	Cordilleran, <i>Empidonax occidentalis</i>
	Pacific-slope, <i>Empidonax difficilis</i>
	Western (see Cordilleran and Pacific-slope)

Remove	Add (alphabetically)
REMOVE Gannet, Northern, <i>Sula bassanus</i>	ADD Gannet, Northern, <i>Morus bassanus</i> Under "Gnatcatcher:" ADD alphabetically entry California, <i>Poliophtila californica</i>
REMOVE Golden-Plover, Lesser, <i>Pluvialis dominica</i>	ADD Golden-Plover: Under "Golden-Plover:" ADD alphabetically entries American, <i>Pluvialis dominica</i> Lesser (see American and Pacific) Pacific, <i>Pluvialis fulva</i>
Under "Goose:" REMOVE entry Hawaiian, <i>Nesochen sandvicensis</i>	Under "Goose:" ADD alphabetically entries Hawaiian, <i>Branta sandvicensis</i> Under "Grebe:" ADD alphabetically entry Clark's, <i>Aechmophorus clarkii</i> Under "Gull:" ADD alphabetically entry Black-tailed, <i>Larus crassirostris</i>
REMOVE Hawk-Owl, Northern, <i>Surnia ulula</i>	ADD Hawk-Owl (see Owl, Northern Hawk)
Under "Heron:" REMOVE entry Green-backed, <i>Butorides striatus</i>	Under "Heron:" ADD alphabetically entries Green, <i>Butorides virescens</i> Green-backed (see Green)
Under "Kite:" REMOVE entry Black-shouldered, <i>Elanus caeruleus</i>	ADD Kamao, <i>Myadestes myadestinus</i> (formerly included with Hawaiian Thrush [= Omao], <i>Phaeornis obscurus</i>) Under "Kite:" ADD alphabetically entries Black-shouldered (see White-tailed) White-tailed, <i>Elanus leucurus</i> Under "Loon:" ADD alphabetically entry Pacific, <i>Gavia pacifica</i>
Under "Night-Heron:" REMOVE entry Yellow-crowned, <i>Nycticorax violaceus</i>	ADD Millerbird, <i>Acrocephalus familiaris</i> Under "Night-Heron:" ADD alphabetically entry Yellow-crowned, <i>Nyctanassa violacea</i>
Under "Owl:" REMOVE entries Barn (see Barn-Owl)	ADD Olomao, <i>Myadestes lanaiensis</i> (formerly included with Hawaiian Thrush [= Omao], <i>Phaeornis obscurus</i>) ADD Omao, <i>Myadestes obscurus</i> (formerly Hawaiian Thrush, <i>Phaeornis obscurus</i>) Under "Owl:" ADD alphabetically entries Barn, <i>Tyto alba</i>
Burrowing, <i>Athene cunicularia</i>	Burrowing, <i>Speotyto cunicularia</i>
Hawk (see Hawk-Owl)	Northern Hawk, <i>Surnia ulula</i>
REMOVE Pauraque, Common, <i>Nyctidromus albigollis</i>	ADD Pauraque, <i>Nyctidromus albigollis</i>
Under "Petrel:" REMOVE entry White-necked, <i>Pterodroma externa</i>	Under "Petrel:" ADD alphabetically entries Juan Fernandez, <i>Pterodroma externa</i> White-necked, <i>Pterodroma cervicalis</i>
Under "Pipit:" REMOVE entry Water, <i>Anthus spinoletta</i>	Under "Pipit:" ADD alphabetically entries American, <i>anthus rubescens</i> Water (see American)
	ADD Puaiohi, <i>Myadestes palmeri</i> (formerly Small Kauai Thrush, <i>Phaeornis palmeri</i>)
	ADD Rosy-Finch: Under "Rosy-Finch:" ADD alphabetically entries Black, <i>Leucosticte atrata</i> Brown-capped, <i>Leucosticte australis</i> Gray-crowned, <i>Leucosticte tephrocotis</i>
	Under "Sandpiper:" ADD alphabetically entry Green, <i>Tringa ochropus</i>
	Under "Sapsucker:" ADD alphabetically entry Red-naped, <i>Sphyrapicus nuchalis</i>
Under "Storm-Petrel:" REMOVE entry Sooty, <i>Oceanodroma tristrami</i>	Under "Storm-Petrel:" ADD alphabetically entries Sooty (see Tristram's) Tristram's, <i>Oceanodroma tristrami</i>
Under "Thrush:" REMOVE entries Eye-browed, <i>Turdus obscurus</i>	Under "Thrush:" ADD alphabetically entries Eye-browed, <i>Turdus obscurus</i>
Hawaiian, <i>Phaeornis obscurus</i>	Hawaiian (see Kamao, Olomao, and Omao)
Small Kauai <i>Phaeornis palmeri</i>	Small Kauai (see Puaiohi)
Under "Towhee:" REMOVE Brown, <i>Pipilo fuscus</i>	Under "Towhee:" ADD alphabetically entries Brown (see California and Canyon) California, <i>Pipilo crissalis</i> Canyon, <i>Pipilo fuscus</i> Add Turtle-Dove, Oriental, <i>Streptopelia orientalis</i> Under "Vireo:" ADD alphabetically entry Yellow-green, <i>Vireo flavoviridis</i>

Dated: March 18, 1995.

George T. Frampton, Jr.,

*Assistant Secretary for Fish and Wildlife and
Parks.*

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